IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: ORDER ::

Smt.Amanat Vs. Smt.Nenu Devi & Ors.

S.B. CIVIL WRIT PETITION NO.5469/2005

Date of order ::: 19.05.2006.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. C.S.Kotwani for the petitioner.
Mr. Rajesh Choudhary for
Mr. L.R.Choudhary, for the respondent No.1.

..

BY THE COURT:

This writ petition has been submitted against the order dated 25.08.2005 passed by the Civil Judge (Senior Division), Barmer in Election Petition No.2/2005 refusing the prayer of the petitioner for taking written statement on record belatedly.

Briefly put, the facts relevant for determination of the questions involved in this writ petition are that the petitioner was elected as Pradhan of Panchayat Samiti, Barmer in the elections held on 10.02.2005. The respondent No.1 filed an election petition under the provisions of Rajasthan Panchayati Raj Act, 1994 before the District Judge, Balotra challenging

the election aforesaid and the election petition was transferred to the Civil Judge (Senior Division), Barmer and numbered as Civil Misc. Case No.2/2005. The petitioner was served with notice of election petition on 13.04.2005 for appearance on 21.04.2005. However, according to the petitioner, on 21.04.2005 she was at Jodhpur for her husband being seriously ill and the counsel appearing on her behalf sought time for filing `Vakalatnama'. Unfortunately, husband of the petitioner expired on 29.04.2005 and in accordance with customs and religious tenets, it was not possible for her to move out of the house for a period of four months and ten days (Iddat Period) and, therefore, she was unable to meet her counsel though `Vakalatnama' was signed by her.

An application was moved on behalf of the petitioner on 20.07.2005 for adjournment of the case for filing of written statement to a day after the aforesaid Iddat period; however, the application was opposed by the election petitioner with the submissions that when the petitioner could sign Vakalatnama and relevant papers as Pradhan during the aforesaid condolence period, she could have prepared the written statement and, therefore, right to submit written statement be closed. The learned Civil Judge proceeded to reject the application submitted by the petitioner by the impugned order dated 25.08.2005 on the consideration that

the petitioner has continued to actively participate in the work of Panchayat Samiti during this Iddat period and, therefore, it cannot be said that she was unable to move out of the house and it appeared that she did not even follow her personal law and when she had executed so much of the work, then she could have filed the reply. According to the learned Judge, the petitioner had failed to bring about an exceptional case for which the time for filing written statement could be extended.

While assailing the order aforesaid, learned counsel for the petitioner has pointed out that similar order on the even date was passed by the learned trial court in Election Petition No.1/2005 that has been filed against the same petitioner but challenging her election as Member of Panchayat Samiti, Barmer by another election petitioner; and that the order passed in Election Petition No.1/2005 has already been considered and pronounced against by this Court in S.B.Civil Writ Petition No.5474/2005 : Smt.Amanat Vs. Smt.Puro Devi & others, decided on 13.01.2006. Learned counsel appearing for the respondent also could not dispute the fact that the said writ petition involving similar facts and identical issues has already been allowed by this Court.

In the aforesaid decision in writ petition No.5474/2005, this Court has found the approach of the learned Civil Judge to be not in conformity with law. This Court has, inter alia,

held,-

> "This Court is clearly of opinion that if the petitioner while balancing the requirements of personal law applicable to her has been attending on the emergent nature tasks, she cannot be said to have comported herself contrary to the requirement of her personal law and on that count alone, it was not justified on the part of learned Civil Judge to have ignored the realities of the situation and the predicament of the petitioner.
>
> Obviously, for the purpose of filing of written statement, the petitioner was required to supply necessary instructions to the lawyer concerned and it was not a kind of task which could have been undertaken and executed by herself. In that view of the matter, interest of justice would definitely have been served had the petitioner been afforded reasonable opportunity by enlargement of time for submission of the written statement. However, the learned Civil Judge has proceeded to adopt an extremely hyper-technical approach which cannot be countenanced."

With reference to the decision of the Hon'ble Supreme Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India : 2005(2) WLC (SC) Civil 242 and of this Court in M/s. Amolak Singh Gulab Singh Vs. The Civil Judge & Anr. (S.B.Civil Writ Petition No.6033/2005) decided on 14.12.2005, the order dated 25.08.2005 was held unsustainable; and written statement was permitted to be taken on record on payment of Rs.1000/- as costs that was offered by the petitioner herself.

In the aforesaid view of the matter, the order impugned in this writ petition also deserves to be set aside and the written statement to be submitted by the petitioner deserves to be permitted on record on payment of costs of Rs.1000/-.

As a result of the aforesaid, this writ petition is allowed, the impugned order dated 25th August 2005 is set aside and the written statement to be filed by the petitioner is directed to be taken on record on the condition of the petitioner making payment of costs of Rs.1000/- to the respondent No.1. The petitioner shall be required to submit written statement and so also to make payment of the costs to the respondent No.1 on or before 31st May 2006. The learned Civil Judge (Senior Division), Barmer shall thereafter proceed with the trial of the election petition in accordance with law. There shall be no order as to costs of this writ petition.

(DINESH MAHESHWARI), J.

MK